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Delegated Powers and Law Reform Committee

Instruments considered by the Delegated Powers and Law Reform Committee during the fourth quarter of the Parliamentary Year 2022-22



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Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Summary

1. This reporting period covers **1 March to 12 May 2022**.
2. There was a decrease of instruments considered in Quarter 4 of 2021-22 compared to Quarter 3 (67 and 89 respectively). This is an overall decrease of **24**
3. The number of made affirmative instruments decreased considerably from **16** in the last quarter to **2** in this reporting period, a decrease of **87%**.
4. In terms of the number of instruments being reported, results for this quarter are higher than the last; **19%** of instruments being reported by the Committee compared to **11%** in the previous quarter. However, excluding those where the Committee was content with the explanation given for breaching the 28-day rule, these figures fall to **4%** in Quarter 4 compared with **5%** in Quarter 3.
5. **One** instrument engaged in significant reporting grounds which was the same as in Quarter 3.
6. This quarter saw a higher number of instruments being reported under reporting ground **(j)** (breaching of laying requirements). There were **10** compared with **7** in the previous quarter. Of these, **5** were in response to the war in Ukraine and on each occasion the Committee was satisfied with the Scottish Government's reasons for the breach.
7. The Committee identified **10** Scottish Government instruments in which minor points were raised. There were **18** in the previous quarter.
8. During this period, the Committee considered **5** Bills at Stage 1 and **3** LCMs.

Introduction

9. The purpose of this report is to provide a record of the Committee's scrutiny of Scottish statutory instruments (SSIs) during the fourth quarter of the parliamentary year 2021-22 during the period **1 March to 12 May 2022**.
10. This report—
 - sets out details of instruments considered by the Committee which were drawn to the attention of the Parliament during the reporting period on one or more of the reporting grounds set out in Standing Orders;
 - touches briefly on the commitments made by the Scottish Government and the Lord President's Private Office (LPPO) in response to the Committee's comments and details any action that has been taken; and
 - outlines the Committee's activity in respect of other matters within its remit.
11. As with previous quarterly reports, this report is intended to be more statistical than analytical to help inform the Committee's annual report which goes into more detail on the work carried out by the Committee during the parliamentary year. However, the statistics can still be used to highlight emerging themes in advance of the annual report.

Overview and analysis

12. During the period 1 March to 12 May 2022, a total of **67** instruments were considered by the Committee and laid by the Scottish Government. None were laid by the LPPO.
13. The **67** SSIs laid by the Scottish Government are broken down as follows—
 - **2** made affirmative instruments;
 - **16** affirmative instruments;
 - **35** negative instruments; and
 - **14** laid only instruments.
14. .
15. The number of made affirmative instruments decreased from **16** in the last quarter to **2** in this reporting period, a decrease of **87%**.
16. Table 1 provides a breakdown of instruments laid by the Scottish Government and the LPPO—

Table 1

Scottish Government			LPPO		
Total SSIs	Total drawn to the Parliament’s attention	Percentage	Total SSIs	Total drawn to the Parliament’s attention	Percentage
67	13 reported 3 when excluding breaches of the 28-day rule	19% 4%	0	0	0%

17. These figures show that the Committee considered **67** instruments laid by the Scottish, of which **13** were drawn to the Parliament’s attention. While this overall figure equates to **19%** of instruments considered, **10** of the instruments were reported under reporting ground (j) for breaching the 28-day rule, of which the Committee was content with the explanations of the breaches. **5** of the breaches were in response to the war in Ukraine which are highlighted later in the report. If you exclude the 10 instruments from the total figure, the Committee reported **3** instruments, equating to **4%** of the instruments considered.
18. This is in comparison to the previous quarter of the parliamentary year 2021-22, when the Committee considered **87** instruments laid by the Scottish Government. The Parliament’s attention was drawn to **10 (11%)** of these instruments, **5** of these was reported under reporting ground (j) where the Committee was content with the reasons given for the breach. So, excluding these from the overall figure, **5** were reported which equates to just over **5%** of instruments considered.
19. The table also shows that the Committee considered no instruments laid by the LPPO. There were **2** instruments considered in the previous quarter of which both were drawn to the Parliament’s attention.

Reporting grounds

20. Under paragraph (a) of Rule 6.11 of Standing Orders, the Committee may determine that the attention of the Parliament should be drawn to an SSI on one or more of a range of technical and legal grounds. These grounds are set out in Rule 10.3.1 of the Standing Orders.
21. The Committee considers some reporting grounds to be of more significance than others. The Committee has therefore determined that it has concerns where an instrument is drawn to the attention of the Parliament on one of the following grounds:
- **ground (e)** – doubt as to whether it is *intra vires*;
 - **ground (f)** – raises a devolution issue; and
 - **ground (i)** – drafting appears to be defective.
22. These reporting grounds are referred to as *the significant reporting grounds*. The Committee considers every report under one of these grounds to be a serious matter as these raise fundamental legal questions and so there is the potential for the validity of the instrument to be questioned.
23. Table 2 provides a breakdown of the number of instruments reported-on by the relevant reporting ground—

Table 2

Reporting Ground	Number of SSIs reported	
	Scottish Government	LPPO
General ground	2	0
(j) failure to comply with laying requirements	10	0
(g) the way the enabling powers have been used is unusual or unexpected	0	0
(h) the form or meaning of the SSI could be clearer	1	0
(i) drafting appears to be defective	1	0

24. One instrument engaged in the more serious reporting grounds. This was the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/90) in relation to an error in Regulation 2 of the instrument. The Scottish Government has committed to rectifying the error by making a further amendment in regulations which will be laid in the Scottish Parliament at the next available opportunity.

Withdrawal of instruments

25. Three instruments were withdrawn, of which two were re-laid in this period:
- Social Security (Up-rating) (Miscellaneous Amendment) (Scotland) Regulations 2022 (SSI 2022/Draft);
 - Surrender of Offensive Weapons (Compensation) (Scotland) Regulations 2022 (SSI 2022/Draft); and
 - Scottish Social Housing Charter: April 2022 (SG/2022/32) – (not re-laid as of yet)
26. Two instruments were withdrawn in the third quarter of the year.

Instruments referred to Lead Committees

Summary

27. The COVID-19 Committee received **8** instruments, none of which were drawn to the attention of the Parliament.
28. The Criminal Justice Committee received **17** instruments. **2** instruments were reported for failure to comply with laying requirements.
29. The Education, Children and Young People Committee received **3** instruments. **2** instruments were reported for failure to comply with laying requirements.
30. The Equalities, Human Rights and Civil Justice Committee received **3** instruments, none of which were drawn to the attention of the Parliament.
31. Health, Social Care and Sport Committee received **10** instruments, **4** of which were drawn to the attention of the Parliament for failure to comply with laying requirements and under the general reporting ground.
32. The Local Government, Housing and Planning Committee received **11** instruments, **2** of which were drawn to the attention of the Parliament for failure to comply with laying requirements.
33. The Net Zero, Energy and Transport Committee received **4** instruments, none of which were drawn to the attention of the Parliament.
34. The Rural Affairs, Islands and Natural Environment Committee received **5** instruments and **3** were drawn to the attention of the Parliament for failure to comply with laying requirements, the form or meaning of the SSI could be clearer, and drafting appears to be defective.
35. The Social Justice and Social Security Committee received **3** instruments, none of which were drawn to the attention of the Parliament.

The Scottish Parliament

36. The Scottish Parliament received **3** instruments, none of which were drawn to the attention of the Parliament.
37. Information detailing specific SSIs and the grounds that they were reported on, is provided in **Annex A**.
38. Table 3 provides a breakdown of instruments referred to, and reported on, by lead committees—

Table 3

Lead committee	Scottish Government LPO			
	Total SSIs	Total reported	Total SSIs	Total reported
COVID 19-Recovery	8	0	0	0
Criminal Justice	17	2	0	0
Economy and Fair Work Committee	0	0	0	0
Education, Children and Young People Committee	3	2	0	0
Equalities, Human Rights and Civil Justice Committee	3	0	0	0
Finance and Public Administration Committee	0	0	0	0
Health, Social Care and Sport Committee	10	4	0	0
Local Government, Housing and Planning Committee	11	2	0	0
Net Zero, Energy and Transport Committee	4	0	0	0
Rural Affairs, Islands and Natural Environment Committee	5	3	0	0
Social Justice and Social Security Committee	3	0	0	0
Standards, Procedures and Public Appointments Committee	0	0	0	0
The Parliament	3	0	0	0
TOTAL	67	13	0	0

Scottish Statutory Instruments - General

Ukraine

39. During the reporting period there were **8** SSIs in response to the war in Ukraine, **3** of which were expedited under the affirmative procedure and were considered by the Scottish Parliament in place of the lead committee. The remaining **5** instruments were drawn to the attention of the Parliament under failure to comply with laying requirements. However, on each occasion the Committee was satisfied with the Scottish Government's reasons for the breach.

Consider by the DPLR Committee and the Parliament:

- Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2022 (2022/Draft)
- Private Landlord Registration (Modification) (Scotland) Order 2022 (2022/Draft)
- Social Security (Residence Requirements) (Ukraine) (Scotland) Regulations 2022 (2022/Draft)

Considered by the DPLR Committee and the relevant lead committee:

- Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022 (2022/97)
- National Health Service (Charges to Overseas Visitors) (Scotland) Amendment Regulations 2022 (2022/114)
- Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2022 (2022/124)
- Council Tax Reduction and Council Tax (Discounts) (Miscellaneous Amendment) (Scotland) Regulations 2022 (2022/125)
- Non-Commercial Movement of Pet Animals (Scotland) Amendment Regulations 2022 (2022/131)

Made affirmative instruments

40. The Committee took evidence from the Cabinet Secretary for Covid Recovery on 2 made affirmative instruments on 1 March 2022 and agreed, by division, not to draw the Regulations to the attention of the Parliament:
- Coronavirus Act 2020 (Alteration of Expiry Date) (Scotland) Regulations 2022 (SSI 2022/40)
 - Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2022 (SSI 2022/Draft)

SSI Protocol

41. The Committee considered its final instrument under the Protocol on 10 May. This was the Environment and Trade in Animals and Related Products (EU Exit)

(Scotland) (Miscellaneous Amendment) Regulations 2022 (SSI 2022/138).

Commitments

42. No instruments were laid by the Scottish Government during this period in relation to its commitment to lay amending instruments to correct errors identified and reported on by the Committee.
43. A list of all outstanding Scottish Government commitments and commitments met can be found at **Annex B**.

LPPO instruments

44. There are no outstanding LPPO commitments from this quarter, or from previous reporting periods.

Minor Points

45. The Committee identified a total of **10** instruments on which minor points were raised (generally relating to typographical or referencing errors) compared with **18** instruments identified in Quarter 3. All of the relevant instruments were laid by the Scottish Government.

Summary

46. Although the focus of this report is primarily on the Committee's activities in relation to its scrutiny of instruments, the following section briefly outlines the Committee's activity in respect to other matters.

Bills

47. The Committee published five reports on the following Bills at Stage 1—
 - [Hunting with Dogs \(Scotland\) Bill](#)
 - [Scottish Local Government Elections \(Candidacy Rights of Foreign Nationals\) Bill](#)
 - [Fireworks and Pyrotechnic Articles \(Scotland\) Bill](#)
 - [Coronavirus \(Recovery and Reform\) \(Scotland\) Bill](#)
 - [Gender Recognition Reform \(Scotland\) Bill](#)

Legislative Consent Memorandums (LCMs)

48. Three LCMs were considered during this reporting period—
 - [Economic Crime \(Transparency and Enforcement\) Bill \(UK Parliament legislation\)](#)
 - [Professional Qualifications Bill \(UK Parliament legislation\)](#)
 - [High Speed Rail \(Crewe - Manchester\) Bill \(UK Parliament legislation\)](#)

Annex A – Reporting grounds: 1 March to 12 May 2022

General

- National Health Service Superannuation and Pension Schemes (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/117) **Health, Social Care and Sport Committee**
- Genetically Modified Food and Feed (Authorisations) (Scotland) Regulations 2022 (SSI 2022/137) **Health, Social Care and Sport Committee**

(j) - failure to comply with laying requirements

- Police Pensions (Scotland) Amendment Regulations 2022 (SSI 2022/101) **Criminal Justice Committee**
- Firefighters' Pension Scheme (Scotland) Amendment Regulations 2022 (SSI 2022/103) **Criminal Justice Committee**
- Teachers' Pension Scheme (Scotland) Amendment Regulations 2022 (SSI 2022/102) **Education, Children and Young People Committee**
- Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022 (SSI 2021/97) **Education, Children and Young People Committee**
- National Health Service Pension Schemes (Scotland) Amendment Regulations 2022 (SSI 2022/100) **Health, Social Care and Sport Committee**
- National Health Service (Charges to Overseas Visitors) (Scotland) Amendment Regulations 2022 (SSI 2021/114) **Health, Social Care and Sport Committee**
- National Health Service Superannuation and Pension Schemes (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/117) **Health, Social Care and Sport Committee**
- Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2022 (SSI 2022/124) **Local Government, Housing and Planning Committee**
- Council Tax Reduction and Council Tax (Discounts) (Miscellaneous Amendment) (Scotland) Regulations 2022 (SSI 2022/125) **Local Government, Housing and Planning Committee**
- Non-Commercial Movement of Pet Animals (Scotland) Amendment Regulations 2022 (SSI 2022/131) **Rural Affairs, Islands and Natural Environment Committee**

(h) - the form or meaning of the SSI could be clearer

- Rural Support (Controls) (Coronavirus) (Scotland) Regulations 2022 (SSI 2022/107) **Rural Affairs, Islands and Natural Environment Committee** (the Committee wrote to the Scottish Government on 29 April asking whether it intends to undertake any further legislative work in this area to seek to make this complex area of law more

comprehensible. The Scottish Government responded on 20 May).

(i) - drafting appears to be defective

- Official Controls (Transitional Staging Period) (Miscellaneous Amendments)
(Scotland) Regulations 2022 (SSI 2022/90) **Rural Affairs, Islands and Natural
Environment Committee**

Annex B – Historic Commitments Scottish Government

- Education (Listed Bodies) (Scotland) Order 2018 (SSI 2018/7) *commitment to bring forward an amendment at the earliest opportunity*
- Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) Order 2019 (SSI 2019/183) [**11th Report, 2019. Published 06/03/2019**] *commitment to bring forward an amendment at the earliest opportunity*
- Education (Fees and Student Support) (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/ 28) [**6th Report 2021, published 10/02/21**] *commitment to bring forward an amendment at the earliest opportunity*

Historic Commitments met by Scottish Government

- Education (Fees and Student Support) (Miscellaneous Amendments) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/70) [**12th Report, 2019. Published 12/03/2019**] *as amended by the Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/213) which came into force on 11th September 2020.*

